1040.

SUPREME COURT OF THE UNITED STATES.

No. 165.

THOMAS C. SHELDON AND UX., APPELLANTS,

vs.

WILLIAM E. SILL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR MICHIGAN.

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CIRCUIT COURT OF THE UNITED STATES,
For the seventh circuit and district of Michigan.

In chancery.

Pleas before the judges of the circuit court of the United States for the seventh circuit and district of Michigan, at the district court room in the city of Detroit, of the term of October, in the year of our Lord one thousand eight hundred and forty-six.

DISTRICT OF MICHIGAN, *to wit:*

Be it remembered, that on the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-five, William E. Sill comes into the court aforesaid, before the judges thereof, at the district court room in the city of Detroit, then and there by his solicitors, Messrs. Joy & Porter, and filed in the said court, in pursuance of the statute and rules and practice of said court, his bill of complaint against Thomas C. Sheldon and Eleanor Sheldon his wife, in the words and figures following, to wit:

Bill of complaint.

DISTRICT OF MICHIGAN:

To the judges of the circuit court of the United States for the district of Michigan, sitting in equity.

William E. Sill, of Geneva, and a citizen of the State of New York, brings this his bill of complaint against Thomas C. Sheldon and Eleanor Sheldon his wife, of Detroit, and citizens of the State of Michigan; and thereupon your orator complaining states, that on the first day of November, in the year eighteen hundred and thirty-eight, the said defendant had become, and for a long time had been, and then was, indebted to the president, directors, and company of the Bank of Michigan, a body corporate and politic under the laws of the State of Michigan, in the sum of twenty-one thousand and seven dollars, for money by him borrowed of the said bank before that period; and being so indebted, in part to secure the payment of said debt, the said defendant did, on the said first day of November, in the year eighteen hundred and thirty-eight, execute and deliver to Eurotas P. Hastings, esquire, then the president of the said bank, his bond, wherein and whereby he, the said defendant, acknowledges himself held and firmly bound unto the said Eurotas P. Hastings, president of the Bank of Michigan, in trust, for the president, directors, and company of the said bank, in the sum of ten thousand dollars, to be paid to the said Eurotas P., president as aforesaid, or his attorney or assigns; to which payment, well and truly to be made, he thereby bound himself, his heirs, and assigns, firmly by the said writing obligatory; but subject to the express condition, that if the said defendant, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said president, directors, and company of the Bank of Michigan, their attorney, or assigns,

the just and full sum of five thousand dollars, at the office of the North American Trust and Banking Company, in the city of New York, in one year from the date thereof, with interest thereon, at and after the lawful rate of seven per centum per annum, to be paid half yearly, on the first days of May and November in each and every year, until the said principal sum should be fully paid, then the said obligation should be void, otherwise remain in full force and virtue.

And further your orator states, that in order more effectually to secure the payment of the said sum of five thousand dollars, and the interest thereon, the said defendant did, on the said first day of November, make and execute, and deliver unto the said Eurotas P. Hastings, president as aforesaid, in trust, for the president, directors, and company, as aforesaid, his indenture of mortgage, wherein and whereby it was witnessed that the said defendants, for the better securing the payment of the said sum of money mentioned in the condition of the said bond, had, by the said indenture, granted, bargained, and sold, unto the said Hastings, and did, by the said presents, grant, bargain, sell, and convey, unto the said Hastings, and to his successor in office, attorney, or assigns, for ever, all that certain piece or parcel of land, situate, lying, and being in the city of Detroit, in the county of Wayne, and State of Michigan, and designated as lots numbered five and six in the military reservation, so called, on the south side of Fort street in said city, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging; to have and to hold the said premises and appurtenances to the said Hastings, his successor, attorney, or assigns, for ever, for the proper use, benefit, and behoof of the Bank of Michigan. Provided always, and the said indenture was upon the express condition, that if the said defendants should well and truly pay, or cause to be paid, unto the said Hastings, his successor, attorney, or assigns, the said sum of money mentioned in the condition of the said bond, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture, and the estate thereby granted, should cease, and become null and void.

And your orator further states, that the said indenture was duly executed in the presence of witnesses, and duly acknowledged by the defendants, in accordance with the laws of the State of Michigan, and duly recorded in the office of the register of the county of Wayne.

And your orator further states, that the said defendant had, at the time of the execution of said bond and indenture, been indebted to the said bank in the sum of more than sixteen thousand dollars, for money by him borrowed of said bank since the month of December, in the year eighteen hundred and thirty-six; that said indebtedness was upon promissory notes made by said Thomas C. Sheldon and discounted by said bank; and that being wholly unable to pay said indebtedness, and said promissory notes having long been past due and dishonored, in order to secure a small portion of said money so due to said bank, the said defendants executed and delivered the said bond and indenture of mortgage.

And your orator further states, that the amount of said bond and mortgage was, by said bank, credited to said Sheldon upon his said indebtedness, as five thousand dollars paid thereon.

And your orator further states, that at the time of the execution of said mortgage, and ever since the year eighteen hundred and thirty-three, the lawful rate of interest was, and had been, seven per centum per annum, except for money loaned; in which case the parties might stipulate and agree that ten per centum per annum should be paid, which, in such cases, had been lawful since the revision of the statutes of Michigan, which took effect from the last of August, in the year eighteen hundred and thirty-eight.

And your orator further states, that before the execution of the said indenture of mortgage several years, it had been decided by the supreme court of the late territory of Michigan, that although the said Bank of Michigan was, by a clause in its charter, prohibited from taking more than six per cent. per annum in advance upon its loans or discounts, yet, that it might lawfully charge and take, and receive on paper dishonored and past due, seven per cent., as authorized by the general laws of the State, from and after the period when said paper was dishonored until the same should be paid; and that such had been the law of the State for several years previous to the time of the making of said bond and mortgage, as settled by said decision of the said supreme court, and that it had been ever after said decision, and for several years before the execution of said bond and indenture, the custom and universal practice of all the courts of the State of Michigan, in all suits brought by the said bank, to render judgments upon the notes and securities owned by it, and which had been discounted by it, for the principal money due thereon, with interest, at the rate of seven per cent. per annum, from the period when the said securities matured and became due and payable; and such was universally deemed and taken to be the lawful practice in all such cases by the courts of the State of Michigan; and upon all past due debts, due to the said president, directors, and company of the Bank of Michigan, it had been the practice, deemed to be perfectly lawful, and sanctioned by decision of the highest tribunals of the State, to ask, demand, and receive, seven per centum per annum of interest from the time of the falling due of such debts.

And your orator further states, that the said bond and indenture of the said defendants was by them executed to secure a small portion of a very large past due debt, due from said Sheldon to the said bank, and was executed by said defendants, and received by said Hastings, under the full belief, sanctioned by such decisions, that seven per cent. was, in such cases, the lawful rate of interest which the said bank might lawfully demand and take, and which the said defendants might lawfully pay and agree to pay. And further, that the said mortgage and bond were received by the said Hastings with no intention of violating the laws obligatory and binding upon said bank, either on the part of said Hastings or said bank; and if, under such circumstances, it was not lawful to contract for seven per cent. interest in said bond and mort-

gage, then both the said bank and the said Hastings labored under a mistake of fact in this respect, and the said contract, for the interest at and after the lawful rate of seven per cent. per annum, was founded in mistake, and that the intention was to contract for only the lawful interest.

And your orator further states, that the said Hastings, president of said bank, on the third day of January, eighteen hundred and thirty-nine, under the authority, and by the direction of the board of directors of said bank, for and in consideration of five thousand dollars paid to said bank, and of one dollar to him paid, sold, assigned, and transferred, by deed duly executed under the seal of said bank, and under his own seal, the said bond and mortgage, and the monies secured thereby, and the estate thereby created, to your orator.

And your orator further states, that no part of the said principal and interest specified in said bond and indenture have ever been paid, but that the whole amount still remains due, both of principal and interest, and that no suit at law has ever been commenced for the recovery or collection of the same, or any part thereof; and that the said premises are a slender and scanty security for the principal and interest due on said bond and mortgage.

And your orator further states, that he has often, and in a friendly manner, applied to the said defendants for the payment of so much money as is due and owing to him upon said bond and indenture of mortgage.

And your orator well hoped that they would have complied with his reasonable requests; but now so it is, may it please your honors, though no one else except the said defendants are interested, or claim to have any interest in said mortgaged premises, which your orator charges to be true, the said defendants wholly neglect and refuse to pay the same, or any part thereof, contrary to equity and good conscience.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge and belief, and information, full, true, direct, and perfect answer make to such of the several interrogatories herein after numbered and set forth, as by the note here under written they are respectively required to answer, that is to say:

First. Whether the said Thomas C. Sheldon was not, on the first day of November, in the year eighteen hundred and thirty-eight, largely indebted to the president, directors, and company of the Bank of Michigan; whether such indebtedness did not amount, at that time, to twenty thousand dollars and upwards; whether it was not mainly upon promissory notes, discounted in the year eighteen hundred and thirty-six, and had not the said notes been long past due.

Second. Whether the said defendants did not execute and deliver the said bond and indenture of mortgage to the said Hastings, in the manner, and as stated in this bill of complaint, and for the purpose

stated therein; and particularly for the purpose of securing a portion of said debt, which had been then long due and owing from said Sheldon to the said president, directors, and company; and whether the promissory notes upon which said debt mainly was created, had not long before that time arrived at maturity and been dishonored.

Third. Whether the said mortgage and bond was not assigned to your orator, at the time and in the manner stated in this bill of complaint.

Fourth. Whether the whole amount of money specified therein does not remain due and unpaid; whether any part thereof has ever been paid, either to the said bank or your orator.

Fifth. Whether it was not believed, at the time of the execution of said bond and mortgage, that the lawful rate of interest which the said bank was entitled to take upon said securities, was seven per cent. per annum; whether the said defendant did not so think, and whether the officers of the bank did not so think. Whether the said defendant had the remotest idea that he was stipulating to pay a greater rate of interest than the said bank was authorized to receive; whether it has not been the practice of all the courts in the State to give judgments in favor of said bank, on all past due paper discounted by it, for the principal and interest thereon, at the rate of seven per cent. from the time of the maturing of the paper; and whether it had not been decided that that was lawful interest, in such cases, by the supreme court of the late territory of Michigan; and whether ever after such decision, that had not been deemed to be lawful up to the time of executing said mortgage.

Sixth. Whether said premises are not a scanty security for the said money secured to be paid by said bond and indenture.

And that an account may be taken of the amount due to your orator upon the said bond and indenture of mortgage; and that the said defendants may be decreed to pay the same to your orator, together with the costs of this suit, to be taxed; and, in default thereof, that the said mortgaged premises may be sold under the direction of this court, by one of the masters of the same, or by the marshal of the district of Michigan, and out of the proceeds of such sale that your orator may be paid his costs to be taxed in this cause; and also the amount which shall be found to be due to your orator for principal and interest monies upon said bond and mortgage; and that your orator may have such other and further relief, as the nature and circumstances of this case seem to require.

May it please your honors to grant unto your orator a subpœna under the seal of this court, to be directed to said defendants, therein and thereby commanding them to be and appear in this court upon a day to be therein named, then and there to answer the premises, and to stand to, abide, and perform such further order or decree as shall be made in this cause, and to this court shall seem meet.

NOTE.—The said defendants are respectively required to answer the above interrogatories from one to the sixth, inclusive.

And thereupon, at the request and by the direction of said complainant, by his solicitors aforesaid, a writ of subpœna was issued in pursu-

ance of the prayer of said bill of complaint, in the words following, to wit:

Subpœna.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the seventh circuit and district of Michigan.

The President of the United States of America, to Thomas C. [L. S.] Sheldon and Eleanor Sheldon his wife, who are citizens of the State of Michigan.

You are hereby commanded to be and appear in the circuit court of the United States of America, for the seventh circuit and district of Michigan, sitting in chancery, before the judges thereof, at the district court room, in the city of Detroit, on Monday the fifth day of January next ensuing, then and there to answer unto a bill of complaint, exhibited against you, as defendants, by William E. Sill, who is a citizen of the State of New York, as complainant. And this you shall in no wise omit, under the penalty of one thousand dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States of America the seventieth.

JOHN WINDER, *Clerk.*

MEMORANDUM.—The above named defendants are required to enter their appearance in this suit, with the clerk of this court, at his office in the city of Detroit, on or before the day to which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken pro confesso against said defendants.

JOHN WINDER, *Clerk.*

Return to subpœna.

To which said writ of subpœna the marshal of the district of Michigan made return to this court as follows, to wit:

DISTRICT OF MICHIGAN, *ss:*

On the eighth day of December, A. D. 1845, I served the within writ of subpœna on the within Thomas C. Sheldon and Eleanor Sheldon, by delivering to each of them a true and attested copy of *of* the same, and showing them the seal hereon.

Dated Detroit, December 8, 1845.

LEVI S. HUMPHREY,
United States marshal.
By H. S. SKINNER, *Deputy.*

And thereupon comes the defendants, by their solicitor, T. Romeyne, esq., and enter their appearance in this cause, according to the rules and practice of this court; and on the second day of May, in the year of our Lord one thousand eight hundred and forty-six, file their answer to the said bill of complaint, in the words following, that is to say:

Answer.

CIRCUIT COURT OF THE UNITED STATES,
For the district of Michigan.—In chancery.

The joint and several answer of Thomas C. Sheldon and Eleanor Sheldon, to the bill of complaint of William E. Sill.

These defendants, now and at all times hereafter, saving and reserving to themselves all right of exception to the manifold errors and insufficiencies of the bill of complaint, for answer thereto, say:

That the president, directors, and company of the Bank of Michigan were not, at the time of the execution of the mortgage set forth in the bill of complaint, a body politic and corporate under the laws of the State of Michigan. On the contrary, they say, that the first act professing to incorporate said bank was enacted by the governor and judges of the Territory of Michigan, by an act entitled "An act to incorporate the stockholders of the Bank of Michigan," adopted December nineteenth, one thousand eight hundred and seventeen. That the Legislative Council of the Territory of Michigan afterwards enacted an act, entitled "An act to continue the charter of the Bank of Michigan," approved twenty-fifth February, one thousand eight hundred and thirty-one. That afterwards an act was enacted by the said Legislative Council, entitled "An act to establish branches of the Bank of Michigan, Farmers and Mechanics' Bank of Michigan, and Bank of River Raisin," approved March seventh, one thousand eight hundred and thirty-four. These, as defendants are advised and believe, are the only laws under which said president, directors, and company, up to the time of the execution of the bond and mortgage specified in the bill of complaint, could claim a corporate existence. And these defendants submit to this court, that the said acts were without authority and validity, so far as they sought to create a corporation.

These defendants further say, that the sole consideration of said bond and mortgage arose from the operations of said president, directors, and company of the Bank of Michigan as a bank, and in the course of business by it as a banking institution, and that it was unauthorized by law to engage in such business. and that the consideration of said mortgage and bond was illegal, as they are advised, and that the complainant had notice of the nature of said consideration before the said bond and mortgage was assigned to him.

Further answering they say, that if said bank ever had a valid existence as a body politic and corporate, it was within the territorial and jurisdictional limits of the territory and State of Michigan. That Eurotas P. Hastings, named in the bill of complaint, was at and before the time of the execution of said bond and mortgage, and ever since has been, a citizen of the State of Michigan. That the complainant claims the same only through and by virtue of an assignment from said bank, or said Hastings as its president. That the defendants, at the time of the execution of the same were, and ever since have been, citizens of the State of Michigan, and they therefore deny the jurisdiction

of this court, and insist that the court has no jurisdiction in the premises, and they claim, and will claim at the hearing, the same benefit of this defence as if they had demurred to the bill of complaint, or pleaded to the jurisdiction of the court.

Further answering they say, that the said complainant does not own said bond and mortgage in his own right, but as trustee for Jonathan Dwight, Henry Dwight, Edmund Dwight, John Ward, and Benjamin Day, as these defendants have been informed and believe; that these are the persons beneficially interested in the same, and complainant is, as defendants are informed and believe, but a naked trustee for them; that the beneficiaries above named reside in the States of New York and Massachusetts; and that, at the time of filing this bill of complaint, they were citizens of one or other of those States. These defendants are unable to specify the particular terms of the said assignment to said Sill. They have caused to be searched the records of the city of Detroit, and county of Wayne, but can find no record of the same there. But they state that the assignment to the complainant was in terms to him as trustee, and not in his own right; and they pray that the complainant may be compelled to produce said assignment in evidence in this case; and they claim and insist, and will claim and insist at the hearing, that the said beneficiaries or cestuis que trust, are proper and necessary parties to this suit, and they pray the same advantage of this as if they had pleaded the same.

They further admit, that on the first day of November, one thousand eight hundred and thirty-eight, the defendant, Thomas C. Sheldon, was indebted to the president, directors, and company of the Bank of Michigan (if such a body legally existed, which defendants do not admit) in a large sum of money, but they deny that it amounted to the sum specified in the bill.

They admit, that a part of said indebtment arose from the discount of promissory notes. The first was a note dated on sixteenth December, one thousand eight hundred and thirty-six, payable six months after date, with interest, to the order of Eurotas P. Hastings, who then was the president of said pretended bank, and it was by him endorsed, but as defendants believe, not as surety for the bank, or on the understanding that he was to be liable in case of non-payment, but only on account of his official connexion with the bank. The second was a promissory note in the words and figures following:

"On the 30th day of June next, after date without grace, I promise to pay to the order of the cashier of the Bank of Michigan, at the Bank of Michigan, five thousand dollars for value received, with interest, for which my stock in said bank is pledged.

"Detroit, December 31, 1836.

"THOMAS C. SHELDON."

Further answering they say, that the defendant, Thomas C. Sheldon, became a stockholder in said pretended bank on or about the twenty-seventh day of February, one thousand eight hundred and thirty-

Answer.

CIRCUIT COURT OF THE UNITED STATES,
For the district of Michigan.—In chancery.

The joint and several answer of Thomas C. Sheldon and Eleanor Sheldon, to the bill of complaint of William E. Sill.

These defendants, now and at all times hereafter, saving and reserving to themselves all right of exception to the manifold errors and insufficiencies of the bill of complaint, for answer thereto, say:

That the president, directors, and company of the Bank of Michigan were not, at the time of the execution of the mortgage set forth in the bill of complaint, a body politic and corporate under the laws of the State of Michigan. On the contrary, they say, that the first act professing to incorporate said bank was enacted by the governor and judges of the Territory of Michigan, by an act entitled "An act to incorporate the stockholders of the Bank of Michigan," adopted December nineteenth, one thousand eight hundred and seventeen. That the Legislative Council of the Territory of Michigan afterwards enacted an act, entitled "An act to continue the charter of the Bank of Michigan," approved twenty-fifth February, one thousand eight hundred and thirty-one. That afterwards an act was enacted by the said Legislative Council, entitled "An act to establish branches of the Bank of Michigan, Farmers and Mechanics' Bank of Michigan, and Bank of River Raisin," approved March seventh, one thousand eight hundred and thirty-four. These, as defendants are advised and believe, are the only laws under which said president, directors, and company, up to the time of the execution of the bond and mortgage specified in the bill of complaint, could claim a corporate existence. And these defendants submit to this court, that the said acts were without authority and validity, so far as they sought to create a corporation.

These defendants further say, that the sole consideration of said bond and mortgage arose from the operations of said president, directors, and company of the Bank of Michigan as a bank, and in the course of business by it as a banking institution, and that it was unauthorized by law to engage in such business, and that the consideration of said mortgage and bond was illegal, as they are advised, and that the complainant had notice of the nature of said consideration before the said bond and mortgage was assigned to him.

Further answering they say, that if said bank ever had a valid existence as a body politic and corporate, it was within the territorial and jurisdictional limits of the territory and State of Michigan. That Eurotas P. Hastings, named in the bill of complaint, was at and before the time of the execution of said bond and mortgage, and ever since has been, a citizen of the State of Michigan. That the complainant claims the same only through and by virtue of an assignment from said bank, or said Hastings as its president. That the defendants, at the time of the execution of the same were, and ever since have been, citizens of the State of Michigan, and they therefore deny the jurisdiction

of this court, and insist that the court has no jurisdiction in the premises, and they claim, and will claim at the hearing, the same benefit of this defence as if they had demurred to the bill of complaint, or pleaded to the jurisdiction of the court.

Further answering they say, that the said complainant does not own said bond and mortgage in his own right, but as trustee for Jonathan Dwight, Henry Dwight, Edmund Dwight, John Ward, and Benjamin Day, as these defendants have been informed and believe; that these are the persons beneficially interested in the same, and complainant is, as defendants are informed and believe, but a naked trustee for them; that the beneficiaries above named reside in the States of New York and Massachusetts; and that, at the time of filing this bill of complaint, they were citizens of one or other of those States. These defendants are unable to specify the particular terms of the said assignment to said Sill. They have caused to be searched the records of the city of Detroit, and county of Wayne, but can find no record of the same there. But they state that the assignment to the complainant was in terms to him as trustee, and not in his own right; and they pray that the complainant may be compelled to produce said assignment in evidence in this case; and they claim and insist, and will claim and insist at the hearing, that the said beneficiaries or cestuis que trust, are proper and necessary parties to this suit, and they pray the same advantage of this as if they had pleaded the same.

They further admit, that on the first day of November, one thousand eight hundred and thirty-eight, the defendant, Thomas C. Sheldon, was indebted to the president, directors, and company of the Bank of Michigan (if such a body legally existed, which defendants do not admit) in a large sum of money, but they deny that it amounted to the sum specified in the bill.

They admit, that a part of said indebtment arose from the discount of promissory notes. The first was a note dated on sixteenth December, one thousand eight hundred and thirty-six, payable six months after date, with interest, to the order of Eurotas P. Hastings, who then was the president of said pretended bank, and it was by him endorsed, but as defendants believe, not as surety for the bank, or on the understanding that he was to be liable in case of non-payment, but only on account of his official connexion with the bank. The second was a promissory note in the words and figures following:

"On the 30th day of June next, after date without grace, I promise to pay to the order of the cashier of the Bank of Michigan, at the Bank of Michigan, five thousand dollars for value received, with interest, for which my stock in said bank is pledged.

"Detroit, December 31, 1836.

"THOMAS C. SHELDON."

Further answering they say, that the defendant, Thomas C. Sheldon, became a stockholder in said pretended bank on or about the twenty-seventh day of February, one thousand eight hundred and thirty-

five, to the amount of five thousand dollars, or fifty shares of one hundred dollars each. That said last mentioned promissory note was discounted by said bank, and the avails of it passed to said Thomas C.'s credit on account of his said stock; that no part of said stock was paid for by him at the time of subscribing in specie, neither was it at any other time, or in any other manner, than by the avails of said note, or of a previous one of which this note was a renewal; that the said note was in effect and in fact a stock note, and that it was discounted in order that the avails of it might be applied to the payment of said stock, and that they were so applied, and the stock pledged therefor, and that the said defendant is ready and willing to surrender the said stock, and he offers to do so to the complainant, or the said bank, or to any other person, if any there be equitably entitled to the same, if so directed by this court. These defendants insist that the consideration of said note was illegal for the above stated reasons.

Further answering the defendants say, that on the thirty-first day of December, one thousand eight hundred and thirty-six, the defendant, Thomas C. Sheldon, made another promissory note for ten thousand dollars, payable with interest on the thirtieth day of June then next, without grace, to the order of said E. P. Hastings; but on which, for the reasons above stated, they are advised and believe, said Hastings was not to be liable as an endorser or security for the maker, and which was discounted by said pretended bank.

Further answering they say, that on the twenty-sixth day of May, one thousand eight hundred and thirty-seven, said Thomas C. made another promissory note, payable sixty days after date, to the order of said Hastings, for nine hundred dollars, which was discounted by said bank.

These were all the promissory notes, so far as defendants are informed and believe, which on the said first day of November, one thousand eight hundred and thirty-eight, were claimed by said bank as due to it from said Thomas C. Sheldon. But they admit, that there were other charges for moneys loaned, made by the said bank, and amounting to a considerable additional sum, but they are unable to state the same particularly, but all were due and payable, if at all, in the State of Michigan.

Further answering, they deny that said Thomas C. Sheldon was unable to pay or to secure the whole of his indebtedness to said bank at the time specified in the bill complaint. They aver that his indebtment to the bank had been allowed to remain unadjusted in the same way that the accounts of most of their other customers had remained. They admit the execution of the bond and mortgage at the time stated in the bill of complaint.

They aver that by the said bond and mortgage a new loan was made by said bank to said Thomas C. Sheldon of the amount specified in the same; that the old debt to a proportionate and equal amount was extinguished, and a new credit given to said Thomas for the time specified in the bill of complaint, and that in consideration of such new credit and loan, he agreed to pay to the said bank, and it was thus stipu-

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lated in the bond that he should pay, interest on the same half-yearly, at and after the rate of seven per cent. per annum, and that he should also pay the principal and interest in the city of New York ; and these defendants say, that in and by the act professedly incorporating the said president, directors, and company of the Bank of Michigan, it is declared and provided, that the said corporation shall not take more than six per centum per annum in advance on its loans or discounts; and they further say, that at the time when said bond and mortgage were executed, and at a time when they fell due, the rate of exchange between the State of Michigan and the city of New York was, as they are advised and believe, at least two per cent. in favor of the latter place, and that by said bond and mortgage said president, directors, and company exacted from the defendants, and that the said bond and mortgage were intended to secure to them, interest at and after the rate of nine per centum per annum and upwards ; and these defendants insist and submit, that said bond and mortgage are illegal and void.

These defendants further say, that they are unable to set forth, and have no knowledge nor information, save from the bill of complaint, as to the time of the assignment of said bond and mortgage to the complainant; but they aver, that on the second day of May, one thousand eight hundred and thirty-nine, the defendant, Thomas C., paid to Henry R. Sanger, then the cashier of the Bank of Michigan, the sum of one hundred and seventy-five dollars, as the interest for one-half year on said bond, and took his receipt therefor, and that the said defendant had then no knowledge nor notice of such assignment.

Further answering they say, that on the fifth day of January, one thousand eight hundred and thirty-nine, the defendant, Thomas C. Sheldon, executed his bond, and both these defendants executed their mortgage as collateral to the same, in consideration of a renewal and new loan and credit of three thousand five hundred dollars, from the said president, directors, and company of the Bank of Michigan; and that since that time the whole residue of all the alleged indebtment from the said Thomas C. to the said president, directors, and company, according to their own statement and claim, has been fully paid, and satisfied, and discharged. Said indebtment, as claimed by the bank or its assigns, amounted to thirteen thousand four hundred and eighty-four dollars and thirty-three cents, with interest from fifth January, one thousand eight hundred and thirty-nine; twenty-six dollars and seventy-five cents, with interest from the first April, one thousand eight hundred and forty-two; two hundred and fifty dollars, with interest from second of March, one thousand eight hundred and forty-one; one hundred and fifty-one dollars and eighty-four cents; with interest from first July, one thousand eight hundred and forty-one, and twenty-nine dollars and thirty-five cents besides; that much of this consisted of compounded interest, and other illegal and erroneous charges; and that after allowing every thing that said bank claimed, the defendant, Thomas C. Sheldon, has paid them more than the whole, independent of said bonds and mortgages; and in truth, said bank, by its own statement, is indebted to him, and was so at the time of filing this bill of complaint.

These defendants further say, that they are advised and believe, said complainant, and those for whom he is trustee, or some of them, are stockholders of the Bank of Michigan, well acquainted with the restrictions of its charter, and that they had full notice of the consideration of said bond and mortgage at the time of the assignment of the same.

These defendants admit that they have paid nothing on said bond and mortgage, except as hereinbefore stated; they deny that the premises are a scanty security for the amount claimed as due on said bond and mortgage, but in their opinion and belief they are worth the full amount claimed by complainant.

As to the rate of interest in said bond, they say that they know not what others may have believed, or what the officers of the bank may have thought, as to the lawful rate of interest; they do not believe that the officers of the bank did think that it was lawful to charge seven per cent. annual interest, and also exchange on New York, for a debt contracted and payable here; they know nothing save from the bill of complaint, as to the practice of the courts of Michigan as to the rate of interest allowed in judgments in favor of the bank, but leave the complainant to prove the same if he deems it fit.

Further answering they say, that as against the president, directors, and company of the Bank of Michigan, they have, as they are advised and believe, a full defence, both by way of set-off and otherwise, to the said bond and mortgage; and they deny that, as they are advised and believe, the complainant has any good or valid title to the same; on the contrary they say, that as they are informed and believe, that the said president, directors, and company of the Bank of Michigan were, in the year one thousand eight hundred and thirty-eight, largely indebted to the United States for monies deposited; that principal stockholders of said bank, and among them the cestuis que trust of the complainant, or some of them were, as complainants are informed and believe, personally responsible, either directly to the United States, or as bound to indemnify those who were so responsible; that in order to pay the United States, and to save themselves, said stockholders took from the said president, directors, and company an assignment to the said complainant, in trust for them, of bonds and mortgages to the amount of two hundred and twenty-two thousand dollars, payable in the city of New York, with interest at the rate of 7 per cent. per annum; that said bank guaranteed to them the payment of the said two hundred and twenty-two thousand dollars, and interest in full, and gave its obligation to that effect; that in order to secure the payment of said two hundred and twenty-two thousand dollars, said bank executed and delivered, or caused to be executed and delivered, or assigned to the complainant in trust as aforesaid, another bond and mortgage, or bonds and mortgages, to the amount of upwards of eighty-three thousand dollars, and that in consideration thereof, the said parties loaned to the bank the sum of two hundred thousand dollars, and no more; of which sum, one hundred and eighty thousand dollars, as these defendants have been informed and believe, were applied to pay the debt due to the United States.

Afterwards, and some time in the year one thousand eight hundred and forty, the said president, directors, and company of the Bank of Michigan, as defendants are advised and believe, assigned to two of the complainant's cestuis que trust, Edward Dwight and Henry Dwight, and also to William Dwight, one hundred thousand dollars, in nominal amount, of the choses in action of said bank, and gave the obligation of the bank for the payment of the whole sum of one hundred thousand dollars; and, to secure the payment of the said sum, assigned also the additional amount of one hundred and twenty-three thousand dollars and upwards of the assets and choses in action of said bank; and in consideration of the same the said Dwights loaned to said bank the sum of eighty thousand dollars, and no more; which, as the defendants are advised and believe, was applied to pay the remaining debt of the bank to the United States.

These defendants have also been informed, and believe, that as collateral to one or both of the above loans, the lenders required and procured a bond of De Garmo Jones, James Abbott, this defendant, Thomas C. Sheldon, and others of the stockholders of said bank, as still further security for the monies loaned.

These defendants have reason to believe, and do believe, that these transactions were all fraudulent in fact; that the parties to them were well acquainted with the situation of the bank, and with its actual insolvency; that said bank has proved to be utterly insolvent, and its liabilities can now be bought at fifteen per cent. on the dollar; that its own officers and assignees have been allowed to close its affairs; that this has been done without forced sales or sacrifices of property; that its stock is all sunk, its credit destroyed, a large part of its debts unpaid; and this has resulted from the state of its affairs in eighteen hundred and thirty-eight, and not from new transactions and discounts; that, in contemplation of this insolvency, and with a view to secure themselves, its principal stockholders, who were the said Edmund Dwight, Henry Dwight, Jonathan Dwight, and William Dwight, made the above arrangements and agreements, by which they received from the bank upwards of five hundred and twenty-eight thousand dollars of its best securities, with the positive guarantee and obligation of the bank for the payment to them of three hundred and twenty-two thousand dollars and interest, and with other collateral securities besides, advanced but two hundred and eighty thousand dollars; applied two hundred and sixty thousand dollars of that to pay the debt of the United States, then allowed the bank to fail, and, so far as these defendants have been informed, or can learn, have never returned or accounted for any of the securities and assets so received, but claim that they will be losers in the transactions, and threaten to call upon the bondsmen who gave the further collateral security for additional payments, although, as these defendants are prepared to show, the principal and collateral securities were again and again stated by the officers of the bank, under oath, to be substantial and good and collectable.

These defendants further say, that the arrangement and agreement

for the first loan of two thousand dollars, was made in Massachusetts, as they are informed and believe; that the securities assigned to the lenders were payable in the city of New York; that the guarantee or obligation of the bank, for the two hundred and twenty-two thousand dollars, was then due and payable; and that, by the laws of both Massachusetts and New York, such a contract was usurious, corrupt, and absolutely void.

They further say, that the bond and mortgage set forth in the bill of complaint were assigned and delivered, as they are informed and believe, as a part of the said two hundred and twenty-two thousand dollars. They deny that the complainant has any *any* title to the same; but they claim and insist, that the assignment to him was fraudulent in fact, usurious, unlawful, and *and* void.

And these defendants deny all unlawful combination and confederacy in the said bill charged; without that, any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in that behalf most wrongfully sustained.

THOMAS C. SHELDON,
ELEANOR SHELDON.

T. ROMEYN, *Sol. & of counsel.*
JOHN NORVELL, *of counsel.*
VAN DYKE & EMMONS,
Of counsel.

STATE OF MICHIGAN, *County of Wayne, ss:*

On this second day of May, A. D. eighteen hundred and forty-six, came before me the above named Thomas C. Sheldon, the defendant in the foregoing answer named, who, being duly sworn, stated that he had heard said answer subscribed by him read, and knows the contents thereof, and that the same is true, except as to such matters as are therein stated to be upon information and belief, and as to those matters he believes it to be true.

A. MANDELL,
Notary public, Wayne co., Michigan.

On the sixth day of May, in the year of our Lord one thousand eight hundred and forty-six, the said complainant, by his said solicitors, filed his replication to the said answer of the said defendants, in the words following, to wit:

Replication.—Replication.

IN UNITED STATES CIRCUIT COURT,
For the district of Michigan.

In chancery. The replication of William E. Sill, complainant, to the answer of Thomas C. Sheldon and Eleanor Sheldon, defendants.

This repliant, saving and reserving unto himself all and all manner

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of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court sha" direct; and humbly prays, as in and by his said bill he hath already prayed.

JOY & PORTER, *Sol. for complainant.*

Testimony.—Testimony.

CIRCUIT COURT OF THE UNITED STATES,
For the district of Michigan.

WILLIAM E. SILL
vs.
THOMAS C. SHELDON & ELEANOR SHELDON. } In chancery.

Deposition of Charles C. Trowbridge, a witness, produced, sworn, and examined by the complainant in a certain cause entitled as above, before me, Addison Mandell, one of the masters and examiners of this court, on the eighteenth day of June, A. D. 1846, the same as to form, manner of taking, and being reduced to writing, having been agreed to by the solicitors for the respective parties.

DISTRICT OF MICHIGAN,
County of Wayne, ss:

Charles C. Trowbridge, of the city of Detroit, testified as follows:

That the citizenship of the complainant, and his cestui que trusts, and of Eurotas P. Hastings, is correctly set forth in the bill of complaint.

The title of the complainant, as derived from said Eurotas P. Hastings, appears in the assignment, of which a copy is hereto annexed, marked "X." Annexed to this is a copy of the account of Mr. Sheldon with the Bank of Michigan, marked "A," which I believe to be correct.

The answer correctly describes the dates, amounts, and terms of the several notes of the defendant, Sheldon, which the Bank of Michigan held against him, except that it is inaccurate in its statement that said Hastings endorsed them only as president. He endorsed them as an individual, and not in his official capacity, and with the ordinary liability of an endorser.

In February, one thousand eight hundred and thirty-five, Mr. Sheldon became a subscriber to the stock of the Bank of Michigan, at the time of the establishment of the branch at Kalamazoo, to the amount of fifty shares of one hundred dollars each, or five thousand dollars in all. He paid no money for the same at the time of subscribing, or otherwise, but gave his note, and the same was discounted at the ordi-

nary rate of interest, and the avails passed to the credit of capital stock account as cash. The note was several times renewed, and the interest paid by Mr. Sheldon; annexed is the one embraced in the settlement with him; it is marked B. The dividends on the stock were drawn by him in money from time to time, being placed to his account when made, and drawn out upon checks. In this way he received, on the thirtieth day of June, one thousand eight hundred and thirty-five, a dividend of five per cent.; on thirty-first of December, eighteen hundred and thirty-five, a dividend of ten per cent.; on thirtieth June, eighteen hundred and thirty-six, a dividend of twelve per cent.; and on thirty-first of December, eighteen hundred and thirty-six, a dividend of ten per cent.; eighteen hundred and fifty dollars in all. At no time, until this suit was brought, did Mr. Sheldon, to my knowledge, ever make any objection to this note, or deny its validity on account of its being a stock note; on the contrary, in all conversations and settlements, he treated it as an actual, valid, and subsisting debt. The indebtment of Mr. Sheldon, independent of two bonds and mortgages from himself, one for three thousand five hundred dollars, and the other for five thousand dollars, has been settled and discharged.

Mr. Sheldon, like many of the other principal debtors of the bank, professed to be unable to pay money for this residue, and proposed to turn out lands. After some delays and difficulties, certain lands were selected and appraised in this manner: Mr. Sheldon was to select an appraiser; the bank was to select one; if they disagreed, they were to choose an umpire, and the opinion of the majority was to be final. In regard to seven hundred and fifty-two acres of wild land on Rabbit river the appraisers disagreed; an umpire was called in; he and Mr. Sheldon's appraiser fixed the value at ten dollars per acre. They were taken at this price, and after many attempts to sell them, I sold them for two dollars and fifty cents per acre, in claims against the bank, worth at the time about thirty-five cents to the dollar in the market. This was the highest price I could obtain for the said lands; and the nominal price of two dollars and fifty cents per acre was more than their cash value at that time, or at any time since, as I have reason to know from owning several thousand acres in the same vicinity. I understand a suit to be pending in this court for the collection of the bond and mortgage for three thousand five hundred dollars. If that mortgage and the present one should be collected, the whole of Mr. Sheldon's debt, including the stock note, would be paid.

On first of November, eighteen hundred and thirty-eight, Mr. Sheldon, I understand, to have not been able to pay his indebtment to the bank in money. This was the case with most of the debtors of the bank. The bank was indebted to the United States in a large sum, to wit, in the sum of three hundred and thirty-three thousand and twenty dollars, besides an unliquidated interest account; and the United States held a bond for this amount signed by the bank, and by several persons as sureties; but the cestui que trusts were not sureties on that or any other bond of the bank to the United States, or in any other

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manner liable for a dollar of the indebtedness of the bank. Neither were they indebted to it for any loan, or in any other manner. A warrant of attorney, authorizing the entry of judgment upon the bond of the United States, had been executed, and the district attorney was instructed to enter the same.

In order to provide a fund for the payment in part of this debt, and to sustain the bank, it was agreed between the officers of the bank and certain other parties, including the cestui que trusts of the complainant, that the bank should procure certain bonds and mortgages from its debtors for debts actually due to the bank, and which they were then unable to pay in money, which they would assist the bank in selling to the North American Trust Company, or to some other bank or corporation. But after repeated attempts it was found impracticable to sell these bonds and mortgages, or to borrow money from the United States Bank or elsewhere; and in order to save harmless the bondsmen, and save the bank from failure, the cestui que trusts and others, stockholders of the bank, agreed to purchase the same. For some time prior to this agreement, the bank had made efforts, through Mr. Sanger, its cashier, and otherwise, to obtain a loan of money on long time, so as to relieve its debtors, and gradually recover its strength; but, as already observed, without success. It was then that the cestui que trusts applied to me to take charge of the bank, and I was employed in the negotiations which resulted in the sale of two hundred and twenty-three thousand dollars of the bonds and mortgages belonging to the bank, and in my taking charge of its affairs. I obtained therefor the sum of two hundred thousand dollars in cash, which sum, with the collections to be made of its other debtors, it was thought by the stockholders, and by the officers of the bank, would be sufficient to carry the bank safely through all its difficulties. The transactions were open, fair, and in perfect good faith, and were formally submitted on my return from New York to the bondsmen, by whom they were pronounced favorable and fortunate, and better, as I also knew, than could have been done elsewhere.

Among the bonds and mortgages so disposed of, was the one now in controversy; Mr. Sheldon was then indebted to the bank in a large sum for discounted paper, for over drafts, for money taken to exchange, &c. The bank kept an account called "suspense account," to which the payments made on debts were credited. After being so credited, they were no longer subject to the check of the debtor, as they would have been in open account, and they drew interest from the date of payment. Such payments were not specifically applied until the debt was adjusted. Mr. Sheldon had credit in this account for this bond and mortgage as so much cash. It was not specifically applied to any paper, but entered as cash for its full amount; and afterwards, on a general settlement with him, he was allowed upon his paper for so much as having been paid at the date of the bond and mortgage; the bond and mortgage having been previously sold by the bank. It was considered as a payment and extinguishment at the time, pro tanto, of the debt due by Mr. Sheldon

generally, and was a substitute for so much of the debt as was equal to it in amount, to wit, five thousand dollars. Mr. Sheldon's debt had been long due, and the mortgage was to be applied on that prior indebtedness.

Exchange on New York, on first November, eighteen hundred and thirty-eight, appears by the books of the bank to have been sold at two per cent. premium in favor of New York and against Detroit.

From a receipt, in the handwriting of H. K. Sanger, then cashier of the bank, it appears that, on second May, eighteen hundred and thirty-nine, Mr. Sheldon paid Mr. Sanger as cashier one hundred and seventy-five dollars as interest for half a year on the bond and mortgage. I believe he made other payments of interest. It was understood and agreed that the mortgagors should pay their interest at the bank, and the bank should remit it to Mr. Sill.

The cestui que trusts of the complainant were stockholders of the Bank of Michigan at the date of the bond and mortgage, and before and afterward.

As it regards the title of the complainant and his beneficiaries to the security in question, the following is a statement of facts: In the year eighteen hundred and thirty-eight, the bank sold to the complainant as trustee certain bonds and mortgages, (including these,) amounting in the aggregate to two hundred and twenty-three thousand dollars; these were sold for two hundred thousand dollars cash. The bank gave its guarantee that they should be punctually paid, and that the deficiency, if any, should be made good. Both principal and interest were payable in the city of New York. A copy of its guaranty is hereto annexed, marked C. In order to secure this guaranty certain persons, who were sureties on the bond to the United States, (and for whose relief these bonds and mortgages were sold,) including the defendants, gave their bond as collateral. A copy of this is hereto annexed, marked D. Of this sum of two hundred thousand dollars, one hundred and eighty thousand dollars were paid to the United States, and the remainder was applied to the general purposes of the bank. As further collateral to this guaranty, and with a view to secure the fulfilment of it, the bank agreed to transfer bonds and mortgages to the amount of fifty thousand dollars, to be selected by Daniel Goodwin and Charles C. Trowbridge; but in lieu of these, the bank executed a mortgage to Mr. Sill upon the banking house and lot in the city of Detroit, and upon the Newberry storehouse, so called, estimated to be worth about fifty thousand dollars The said banking house and lot was afterwards released by Mr. Sill for a consideration, and sold to the United States in payment of the balance due upon the said bond, being upwards of thirty-two thousand dollars

Subsequent to this sale of bonds and mortgages, and in the year eighteen hundred and forty, the said Bank of Michigan sold to two of the cestui que trusts of the complainant, Edmund Dwight and Henry Dwight, and to William Dwight, certain choses in action to the amount of one hundred thousand dollars. For this the bank received only eighty thousand dollars. To secure the payment of the one

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hundred thousand dollars an assignment was made of one hundred and twenty-three thousand dollars of other assets of the bank, with an agreement that after the collection of the one hundred thousand dollars, the said William E. Sill, trustee, should have a right to select any of the securities from the residuum, and substitute therefor, and return to the bank any of the said bonds and mortgages so sold in eighteen hundred and thirty-eight to an equal amount. This was done, because it already appeared, that, notwithstanding the case in taking the said bonds and mortgages, there *was* likely to be, on account of accumulating interest and depreciation in the value of property, a large deficiency. At the time of making the sale of one hundred thousand dollars of assets in 1840, the bank owed the Government the sum of ninety-five thousand two hundred and thirty-nine dollars on book, besides the unliquidated interest account, which, in the end, proved to be upwards of fifty-four thousand dollars. There was no difference in opinion among the stockholders, directors, officers, and bondsmen, when the bonds and mortgages were sold in eighteen hundred and thirty-eight, that the sum of two hundred thousand dollars added to the collections which would be made by suit and otherwise would sustain the bank, and in a few years restore its capital unimpaired; such opinion was the result of a classification of the securities, and the examination of them one by one; but instead of growing better in quality, the securities grew worse; appraisal and other relief laws came to the aid of the debtor, and while the Government continued to press its claims, it seemed as if the whole debtor class had resolved not to pay; such, however, was the state of the money market, and the unsaleableness of real estate, that the best intentions of the debtor availed but little, and the debt due to the bank seemed immoveable. Such was the high price of money in the summer of eighteen hundred and forty, that the stock of the Utica and Schenectady railroad, considered as one of the most profitable in the United States, fell from 123 to 108. In this condition of things I made efforts to obtain a loan to pay the residue of the debt to the United States, but without success. I then went to Edmund, and Henry, and William Dwight, and after several days negotiation I sold them the one hundred thousand dollars of securities upon the terms before stated; I thought the price high, but they thought, and so did I, that there was an abundance left to pay all the other liabilities of the bank, and that the price was a mere question among the stockholders which could not affect the public; and as between the stockholders, all had been offered the opportunity to share in the advances upon the same terms with them.

The whole sum of eighty thousand dollars received for the one hundred thousand dollars, so sold, was paid to the United States.

The agreement for the sale of the two hundred and twenty-three thousand dollars in bonds and mortgages, and for securing to the purchasers the repayment of that sum, was made in the city of New York, and the money was there advanced in part, and the residue paid in Boston; but said bonds and mortgages, and the guarantees and bonds, a collateral to them, were executed in the State of Michigan.

When Mr. Sheldon took his stock, the bank had been in business fifteen years; for more than ten, or about ten years, it had done a very successful business; it continued to do a good business till the latter part of 1836; its losses for the previous eighteen years were almost nominal, and nearly all that it lost during and after 1836 may be confined to the transactions of that and the following year, 1837. The losses in its business, done (originated) in 1839 and 1840, did not exceed, according to the best of my recollection, five hundred dollars, excepting a loss at the Branch bank of about fifteen hundred dollars. Mr. Sheldon was a large owner of property at Kalamazoo, was desirous to have a branch of the bank established there, came into Detroit and urged the measure upon the bank, assisted to procure or did procure an act of the legislature to authorize it, subscribed five thousand dollars of the stock, and when the branch was established was made the president, which office he held several years, and he was a director every year up to eighteen hundred and forty-one. He procured the note discounted for his stock. The stock of the bank of Michigan was at that time, and for some years afterwards, worth much more than par in the market, and for two years paid very large dividends. The business of 1836 caused the embarrassment which finally resulted in its downfall, but its stock was valuable in the market up to 1841, and was purchased in large amounts by some of the cestui qui trusts as late as November in the year 1841, and February in the year 1842.

As the object of the sale of the bonds and mortgages was mainly to relieve the bondsmen, and thus to unfetter the other resources of the bank to be applied to its other indebtedness, and as the bank sold the bonds and mortgages upon its own statement, and the purchasers living in New York and New England were unacquainted with the makers or their property, they required that the payment of the bonds and mortgages should be guaranteed to them by security equal to that which the United States held. The assignment to Mr. Sill does not name all the parties who are cestui que trusts in these mortgages. There were several others, and by the death of Jonathan Dwight his children and grand-children have become parties in interest. Mr. Sill was made a trustee, not by the assignment, but by an agreement of all the cestui que trusts, and for the convenience of all. He was to have the sole management of the mortgages, collect the monies due, and divide them among the parties in interest, and transact all business connected therewith; he was therefore made trustee.

The sale of the one hundred thousand dollars of securities was not made to the same parties who purchased the bonds and mortgages, but to William, Henry, and Edmund Dwight; William Dwight is the son of Jonathan Dwight, who had deceased.

The sale of the one hundred thousand dollars of securities was made upon an abstract certified as to value by George F. Porter and George C. Bates, then attorneys of the bank; no bondsmen or guarantee were given on this sale.

I have been acquainted with the management of these bonds and mortgages and securities by Joy & Porter, have had them all examined

and appraised by Shubael Conant, Benjamin B. Kerchival, and John Hulbert; and from their appraisal and its results placed before me, and from my personal knowledge of the securities and property, the appraisal confirming my own judgment, I am of opinion that the parties interested in the securities assigned to Mr. Hill, among which is the bond and mortgage of Mr. Sheldon, must, notwithstanding the care with which the securities were taken, be losers by the purchase to the amount of very many thousands of dollars; the actual result however cannot be known for a long time.

C. C. TROWBRIDGE.

Detroit, June 16, 1846.

Subscribed and sworn to before me, this eighteenth day of June, A. D. 1846. ADDISON MANDELL,
Master and examiner of circuit court U. S. for the dist. of Mich.

Exhibit X.

Know all men by these presents, that I, Eurotas P. Hastings, president of the bank of Michigan, and the mortgagees in the annexed deed of mortgages, from Thomas C. Sheldon and wife, in consideration of one dollar to me paid by William E. Sill, of Geneva, in the county of Ontario, and State of New York, trustee of Jonathan Dwight, Henry Dwight, Edmund Dwight, John Ward, and Benjamin Day, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell, assign, transfer, and set over, unto the said Sill, all my right, title, and interest, and all the right, title, and interest of the said Bank of Michigan, in and to the premises mortgaged in the annexed deed, and to the bond of the mortgagor therein named, to secure the payment of which said mortgage was given.

To have and to hold the said mortgaged premises and bond, and all rights and privileges therein and thereunder, to him, the said Sill, trustee as aforesaid, and his successors in said trust forever.

In witness whereof, I, the said Eurotas P. Hastings, president of the Bank of Michigan as aforesaid, have hereunto set my hand and the seal of said bank, this third day of January, anno domini eighteen hundred and thirty-nine.

(Signed) E. P. HASTINGS, *President.*

Signed, sealed, and delivered, in presence of—
N. RAWSON,
H. K. SANGER.

[L. S.] STATE OF MICHIGAN,
Wayne county, ss:

DETROIT, *Jan. fourth, eighteen hundred and thirty-nine.*

Personally appeared Eurotas P. Hastings, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed, for the purposes therein named. Before me, (Signed) H. K. SANGER,
Notary public, Wayne Co., Michigan.

A.

Statement of the debt of Thomas C. Sheldon.

Note dated 16 Dec., 1836,		$1,110 00
Interest to Nov. 1, 1838,		145 86
Note dated 31 Dec., 1836,		5,000 00
Interest to Nov. 1st, 1838,		642 63
Note dated 31 Dec., 1836,		10,000 00
Interest to Nov. 1, 1838,		1,285 26
Balance on coin receipt, 17 May, 1837,		149 72
Interest to Nov. 1, 1838,		15 28
Note due 28 July, 1837, and protest		901 50
Interest to Nov. 1, 1838,		79 58
Check June 7, 1837,		125 00
Interest to Nov. 1, 1838,		12 27
Overdraught on account of double credit, B. Sherman,		1,526 50
Interest 18 Feb., '37, to Nov. 1, 1838,		181 95
Balance on exchange ac't. 10 May, 1834,		406 27
Interest to 1 Nov., 1838,		127 32
		21,707 14
Deduct bond and mortgage to bk., dated 1 Nov., 1838,		5,000 00
		16,707 14
Interest 1 Nov., 1838, to 5 Jan., 1839,		207 73
		16,914 87
Deduct bond and mortgage to bk., dated 5 Jan., 1839,		3,500 14
		13,414 87
Interest 5 Jan. to 1 Feb., 1839,		69 46
		13,484 33
Deduct T. P. Sheldon's note and int. to 1 Feb., 1839,		3,749 80
		9,734 53
Interest 1 Feb., 1839, to 1 April, 1842,		2,157 84
		11,892 37
Check 9 July, 1844,	$65 00	
Recording Dec. 14, '39	1 75	
	66 75	
Less paid on account March 6, 1844,	40 00	
		26 75
Amount carried forward		11,919 12

Amount brought forward as below.

Amount due assignees of Bank of Michigan per statement, 1 April, 1842,		$11,919 12
Interest to 1 Oct., 1842, 6 mos.		417 17
McKnight on Norvell endorsed by you, unpaid		250 00
Interest from 2 March, 1841, and expenses		40 18
Balance due on John Mure's note assumed by you, as per statement 1st July, 1841,	$151 84	
Interest as above, 1 yr. 3 mos.	13 28	
Costs on do. paid Stuart and Webster,	29 35	
		194 47
		$12,820 94
Mr. Seldon claims a deduction of the last item of interest charged on his debt		417 17
		12,413 77
Add balance due at branch		204 00
Paid in		$12,607 77
752 acres wild land on Rabbit river, appraised by Cooley, Wells, and Vandewalker	$7,520	
19 out lots at Grand Rapids appraised by Robinson and Smith,	4,850	
	12,370	
Michigan bank notes	250	
	$12,620	

Sept. 29, 1843.

Exhibit B.

On the 30th day of June next, after date, without grace, I promise to pay to the order of the cashier of the Bank of Michigan, at the Bank of Michigan, five thousand dollars for value received, with interest, for which my stock in said bank is pledged. Detroit, Dec. 31, 1836.

$5000. (Signed) THOS. C. SHELDON.
Interest C. C. TROWBRIDGE.
June 18, 1846.

Exhibit C.

Whereas the Bank of Michigan is indebted to the Government of the United States in a large sum of money, for the payment of which sum, and to enable them to meet other engagements, the said bank has applied to Messrs. Jonathan Dwight, Henry Dwight, Edmund Dwight, John Ward, and Benjamin Day, to purchase certain bonds and mortgage of said bank, who have agreed to make such purchase, upon condition that said bank shall guarantee the payment of interest and principal of said bonds and mortgages, in the city of New York, where the same are made payable. Now, therefore, in consideration of the premises, and of one dollar to the said bank paid, the president, directors,

and company of the Bank of Michigan do hereby guarantee to the said Jonathan Dwight, Henry Dwight, Edmund Dwight, John Ward, and Benjamin Day, the punctual and full payment of the interest and principal of each and every one of said bonds and mortgages mentioned in the schedule to this agreement annexed, at the times and places in the said bonds and mortgages mentioned; and in default of payment by the obligors to the said bonds, as in the said bonds specified, the said bank hereby undertakes and promises to pay the amount of said deficiency on notice and demand thereof.

In testimony whereof, the president, directors, and company of the Bank of Michigan have caused their guaranty to be signed by their president and cashier, and their corporate seal to be hereunto affixed, at Detroit, the seventh day of February, in the year one thousand eight hundred *eight hundred* and thirty-nine.

(Signed) C. C. TROWBRIDGE, *Pres.*
Attest: H. K. SANGER, *Cashier.* [L. S.]

Exhibit D.

Know all men by these presents, that we, Eurotas P. Hastings, De Garmo Jones, Peter Desnoyers, Darius Samson, Charles C. Trowbridge, James Abbott, Oliver Newberry, Edward Brooks, Benjamin B. Kercheval, H. K. Sanger, Thomas C. Sheldon, and Shubael Conant, all of the city of Detroit, and State of Michigan, are held and stand firmly bound unto Jonathan Dwight, of Springfield, Massachusetts, Henry Dwight, of Geneva, New York, Edmund Dwight, of Boston, Massachusetts, and John Ward and Benjamin Day, of the city and State of New York, in the full and just sum of one hundred and seven thousand dollars; to the payment of which sum we hereby, jointly and severally, bind ourselves, our executors and administrators, by these presents.

Signed with our hands, and sealed with our seals, this seventh day of February, in the year one thousand eight hundred and thirty-nine.

The condition of this obligation is such, that whereas the above named obligees have taken of the Bank of Michigan, in the name of William E. Sill, their trustee, certain bonds and mortgages, amounting to the sum of fifty-three thousand five hundred dollars, a schedule of which is hereto annexed, and have paid therefor a certain sum of money, to be applied to the payment of a debt due from said bank to the United States, for which we are personally liable. And whereas the said obligees have taken the said bonds and mortgages, and have made the said payment, upon condition that the repayment to them of said sum of fifty-three thousand five hundred dollars, with interest, as provided in said bond, shall be guaranteed to them by the said obligees, jointly and severally. Now, if the within named obligors shall well and truly guarantee to said obligees the punctual payment of said bonds and mortgages, and interest, at the time specified for the payment of the same, according to the tenor thereof, and shall make up any and all deficiency that shall occur in the payment of said bonds and mortgages, and interest, at the time specified therein for the pay-

ment of the same, and shall fully indemnify and save harmless the said obligees from all loss of any part of the said fifty-three thousand five hundred dollars and interest thereon as aforesaid, then this obligation to be void, otherwise to be and remain in full force and virtue.

Dated at Detroit, in the county of Wayne, and State of Michigan, the day and year first above written.

E. P. HASTINGS,	[L. S.]
DE G. JONES,	[L. S.]
PETER J. DESNOYERS,	[L. S.]
DARIUS SAMSON,	[L. S.]
C. C. TROWBRIDGE,	[L. S.]
JAMES ABBOTT,	[L. S.]
O. NEWBERRY,	[L. S.]
E. BROOKS,	[L. S.]
B. B. KERCHIVAL,	[L. S.]
H. K. SANGER,	[L. S.]
THOMAS C. SHELDON,	[L. S.]
SHUBAEL CONANT.	[L. S.]

In presence of—

Schedule of mortgages referred to in the foregoing bond.

No. 8.	W. Lawrence	$5,000
" 9.	" "	8,000
" 10.	" "	5,550
" 11.	" "	1,450
" 12.	" "	4,000
" 13.	Jos. Soranger	5,500
" 14.	Josh. Howard	2,500
" 15.	L. Trask	1,100
" 16.	J. W. Willard	5,200
" 17.	Lawrence Vanderwalker	1,200
" 18.	B. F. Larned and wife	4,000
" 19.	Exrs. H. S. Cole	10,000

PRESIDENT, DIRECTORS, AND COMPANY of the Farmers and Mechanics' Bank of Michigan,
vs.
THOMAS DRAKE AND DAVID PADDOCK.

In case of a note made by defendants, and discounted by the plaintiffs, and owned by them at maturity.

I, George C. Bates, attorney at law, do hereby certify, that in the year eighteen hundred and thirty-five, on a motion to assess the damages in this cause on a promissory note then held by the plaintiffs against the said defendants, that it was decided, that the legal rate of interest, after the maturity of the note, was seven per centum, although the charter of the bank prescribed six per centum in advance on loans and discounts. This decision was made by Justice Fletcher, and afterwards,

after argument by Henry S. Cole and myself in the supreme court, the decision was affirmed. The rule laid down in 9 Wendell, U. S. Bank vs. Chapin, 471, was affirmed and made the rule for this State.

(Signed) GEO. C. BATES, *Attorney, &c.*

It is admitted that the within certificate be read as conclusive in the cause, and that the general practice of the court of the State has been in uniform accordance therewith.

(Signed) T. ROMEYN, *for defts.*

Order to amend bill of complaint, entered June 29, 1846.

Order to amend bill.

WILLIAM E. SILL,
vs.
THOMAS C. SHELDON & ELEANOR SHELDON HIS WIFE. } In chancery.

This cause having been argued and debated by counsel on either side, and the case fully considered, leave is hereby granted to amend the bill of complaint in this cause to bring in the President, Directors, and Company of the Bank of Michigan, as parties defendant thereto, &c., and this cause is ordered to stand over for that purpose.

Whereupon, by virtue of said order, the said complainant, by his said solicitors, amended his said bill of complaint in the words following, to wit:

Amendments to bill.

And your orator further states, that the President, Directors, and Company of the Bank of Michigan, and Eurotas P. Hastings, De Garmo Jones, Peter J. Desnoyers, Darius Samson, Charles C. Trowbridge, James Abbott, Oliver Newberry, Edward Brooks, Benjamin B. Kerchival, Shubael Conant, who were all citizens of the State of Michigan at the time of the commencement of this suit, and the survivors of whom still are citizens of the State of Michigan, did, by their writing obligatory, and by them signed and sealed, guarantee the full and punctual payment of the said sum of five thousand dollars, according to the condition of the said bond and mortgage.

And your orator further states, that the said Peter J. Desnoyers has departed this life, leaving his last will and testament, whereby he nominated and appointed James A. Van Dyke, Peter Desnoyers, and Francis Desnoyers, his executors of his said last will and testament, and who have taken upon themselves the duties of executors of said will, and been duly qualified to act as such executors, and whom your orator prays may be made parties to this suit, and who were at the time of the commencement of this suit, and still are, citizens of the State of Michigan.

And your orator further states, that, on or about the eleventh day of January, in the year eighteen hundred and forty-two, the said President, Directors, and Company of the Bank of Michigan failed and became

insolvent, and assigned by its deed of assignment its assets and property to Charles C. Trowbridge, Robert Stuart, and John Owen, in trust, for the benefit of the creditors of said bank, all of whom were, at the time of the commencement of this suit, citizens of this State, and of whom John Owen and Charles C Trowbridge, are now citizens of the State of Michigan, and the said Robert Stuart is a citizen of the State of Illinois, whom, and also the said Eurotas P. Hastings, De Garmo Jones, Darius Samson, Charles C. Trowbridge, James Abbott, Oliver Newberry, Benjamin B. Kerchival, and Shubael Conant, your orator prays may be made defendants to this bill of complaint.

Seventh. Whether the said Eurotas P. Hastings, D. G. Jones, Peter J. Desnoyers, Darius Samson, Charles C. Trowbridge, James Abbott, Oliver Newberry, Edward Brooks, Benjamin B. Kerchival, and Shubael Conant, did not guarantee the payment of the said sum of money as stated in this bill of complaint?

Eighth. Whether said bank did not fail and make an assignment to the said Stuart, Trowbridge, and Owen, in manner as above stated?

Ninth. Whether the said Desnoyer has not departed this life, and left his last will and testament nominating executors as above stated; and whether the said James A. Van Dyke, Peter Desnoyers, and Francis Desnoyers, are not executors of his said last will as above stated?

Note. Said Hastings, Jones, Samson, Peter Desnoyers, Francis Desnoyers, James A. Van Dyke, C. C. Trowbridge, James Abbott, Oliver Newberry, Edward Brooks, Kerchival, and Conant are required to answer the above interrogatories, from seventh to ninth inclusive.

(Signed) JOY & PORTER.

A writ of subpœna was thereupon issued, directed to above named parties defendants, in the words and figures following, to wit:

Circuit court of the United States of America, for the seventh circuit and district of Michigan, sitting in chancery.

Subpœna on bill being amended.

The President of the United States of America to the President, Directors, and Company of the Bank of Michigan, Charles C. Trowbridge, Robert Stuart, and John Owen, and Eurotas P. Hastings, De Garmo Jones, Darius Samson, Charles C. Trowbridge, James Abbott, Oliver Newberry, Edward Brooks, Benjamin B. Kercheval, and Shubael Conant, and James A. Van Dyke, Peter Desnoyers, and Francis Desnoyers, executors of the last will and testament of Peter J. Desnoyers, deceased, who are all citizens of the State of Michigan.

[L. S.]

You are hereby commanded to be and appear in the circuit court of the United States of America, for the seventh circuit and district of Michigan, sitting in chancery, before the judges thereof, at the district court room in the city of Detroit, on the first Monday of September next ensuing, then and there to answer unto a bill of complaint exhibited against you, as defendants, together with Thomas C. Sheldon, and

Eleanor Sheldon his wife, also defendants, by William E. Sill, as complainant, who is a citizen of the State of New York.

And this you shall in no wise omit, under the penalty of one thousand dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States the seventy-first.

JNO. WINDER, *Clerk.*

MEMORANDUM: The above named defendants are required to enter their appearance in this suit with the clerk of this court, at his office, in the city of Detroit, on or before the day to which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken pro confesso against said defendants.

JNO. WINDER, *Clerk.*

On the 25th day of July, A. D. 1846, the marshal of the said district of Michigan returned the said subpœna, with his return of the service thereof thereon endorsed, in the words and figures following, to wit:

Return to subpœna.

DISTRICT OF MICHIGAN, *ss:*

On the 25th day of July, 1846, I served the within writ of subpœna on Shubael Conant, Charles C. Trowbridge, Darius Samson, James A. Van Dyke, Peter Desnoyer, Francis Desnoyer, James Abbott, Oliver Newberry, John Owen, Eurotas P. Hastings, and Benjamin B. Kercheval, by their acceptance of service, and on De Garmo Jones, and Edward Brooks, by delivering to each of them a true and attested copy of the within, and shewing them the seal of the court impressed within; and cannot find Robert Stuart within this district.

A. E. WING, *U. S. Marshal.*
By R. GILLET, *Deputy.*

Order pro confesso, &c.

Order for appearance and default of defendants.

WILLIAM E. SILL, complainant,
vs.
The PRESIDENT, DIRECTORS & COMPANY of the Bank of Michigan, Charles C. Trowbridge, Robert Stuart, and John Owen, and Eurotas P. Hastings, De Garmo Jones, Darius Samson, Charles C. Trowbridge, James Abbott, Oliver Newberry, Edward Brooks, Benjamin B. Kerchival and Shubael Conant, and James A. Vandyke, Peter Desnoyers, and Francis Desnoyers, executors of the last will and testament of Peter J. Desnoyers, dec'd, impleaded with Thomas C. Sheldon and Eleanor Sheldon, his wife, defendants.

The subpœna and memorandum in this cause having been returned duly served upon the President, Directors, and Company of the Bank

of Michigan, Shubael Conant, Charles C. Trowbridge, Darius Samson, James A. Vandyke, Peter Desnoyers, Francis Desnoyers, James Abbott, Oliver Newberry, John Owen, Eurotas P. Hastings, Benjamin B. Kerchival, De Garmo Jones, and Edward Brooks, defendants above named, impleaded as above; and they having failed to enter their appearance, or plead, answer, or demur to the bill of complaint filed in this cause, within the time prescribed by the rules and practice of this court, on motion of Joy & Porter, the solicitors for the said complainant, it is ordered, that the appearance of said defendants, and their default, be, and the same is hereby, entered. And it is further ordered, that the said bill of complaint be, and the same is hereby, taken as confessed against the said Shubael Conant, Charles C. Trowbridge and Darius Samson, and James A. Vandyke, Peter Desnoyers, and Francis Desnoyers, executors of the last will and testament of Peter J. Desnoyers, deceased, James Abbott, Oliver Newberry, John Owen, Eurotas P. Hastings, Benjamin B. Kerchival, De Garmo Jones, and Edward Brooks.

Entered October 5, 1846, rule day.

Order of reference to a master.

At a session of the circuit court of the United States for the seventh circuit and district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-six.

Present, Hon. Ross Wilkins, district judge.

In the case between WILLIAM E. SILL, complainant,
and
THOMAS C. SHELDON and ELEANOR SHELDON, impleaded with the President, Directors, & Company of the Bank of Michigan, Charles C. Trowbridge, Rob't Stuart, John Owen, Eurotas P. Hastings, De Garmo Jones, Darius Samson, James Abbott, Oliver Newberry, Edward Brooks, Benjamin B. Kerchival and Shubael Conant, and James A. Vandyke, Peter Desnoyers, and Francis Desnoyers, executors of the last will and testament of Peter J. Desnoyers, dec'd, defendants.

This cause having been heretofore heard upon the bill and answer of said Sheldon and said Eleanor, and proofs in the cause, and having been ordered to stand over for the purpose of bringing in the other defendants, who are now made parties to said cause; and all of said defendants having been brought in, except Robert Stuart, as to whom the marshal has returned that he could not be found in this district, and the said bill having been regularly taken as confessed, as against all of said defendants who have been served with subpœna; and said complainant asking for no decree against the said Robert Stuart, and electing to proceed against the other defendants only who have been served with pro-

cess; and said cause now, at this time, having come on to be further heard, and counsel having been heard, it is ordered, adjudged, and decreed, that it be referred to one of the masters of this court, to compute and ascertain the amount due to the complainant upon the bond and mortgage described in the bill of complaint filed in this cause, and that he report the same to this court with all convenient speed.

And it is further ordered, that further proceedings in this cause, and such further or other order or decree as to this court may seem proper and meet, be reserved until the coming in of said master's report.

Master's report.

CIRCUIT COURT OF THE UNITED STATES,
For the district of Michigan:

WILLIAM E. SILL, complainant,
vs.
THOMAS C. SHELDON and ELEANOR SHELDON, impleaded with the *the* President, Directors, and Company of the Bank of Michigan, Charles C. Trowbridge, Robert Stuart, John Owen, Eurotas P. Hastings, De Garmo Jones, Darius Samson, James Abbott, Oliver Newberry, Edward Brooks, Benjamin B. Kerchival and Shubael Conant, and James A Vandyke, Peter Desnoyers, and Frencis Desnoyers, executors of the last will and testament of Peter Desnoyers, deceased, defendants. } In chancery.

To the circuit court of the United States in chancery sitting:

In pursuance and in virtue of an order of this court made in the above entitled cause, and bearing date the fifteenth day of October, in the year one thousand eight hundred and forty-six, by which it was referred to one of the masters of this court to compute, ascertain, and report the amount due to the complainant, for principal and interest on the bond and mortgage mentioned and set forth in his bill of complaint filed in this cause, and report thereon to this court with all convenient speed, I, the subscriber, one of the masters of this court, residing in the city of Detroit, in the district of Michigan, do respectfully certify and report, that I have computed and ascertained the amount due to the complainant in this cause as aforesaid, and that the amount so due on said bond and mortgage for the principal and interest, up to, and including, the date of this report, is the sum of seven thousand four hundred and thirty-nine dollars and thirty cents.

And I do further certify and report, that the schedule hereunto annexed, and marked A, and making a part of this my report, contains a statement and account of the principal and interest moneys due to the complainant as aforesaid, the period of the computation of the interest, and its rate; and to which, for greater certainty, I refer.

All which is respectfully submitted.

ADDISON MANDELL,
Master in chancery, cir. ct. U. S. for dist. of Mich.

Dated October 19, 1846.

Schedule marked A, referred to in the preceding report.

One bond dated November 1st, 1838, in the penal sum of $10,000, conditioned to pay $5,000, as follows, "at the office of the North American Trust and Banking Company, in the city of New York, in one year from the date hereof," (thereof,) "with interest thereon at and after the lawful rate of seven per centum per annum, to be paid half yearly;" which bond is accompanied by a mortgage of the same date, on which amount of $5,000 the interest is admitted to have been paid up to Nov. 1st, 1839, or one year from the date of said bond and mortgage.

Principal sum due, - - - - -		$5,000 00
Interest thereon from Nov. 1st, 1839, to Oct. 19, 1846, being 6 years, eleven months, and 19 days, at seven per cent. per annum is	$2,439 30	2,439 30
Amount due complainant this 19th Oct., 1846, is -		$7,439 30

ADDISON MANDELL,
Master in chancery cir. ct. U. S. for dist. of Mich.

Decree.

In the case between WILLIAM A. SILL, comp't,
vs.
THOMAS C. SHELDON and Eleanor Sheldon, impleaded with the President, Directors, and Company of the Bank of Michigan, Charles C. Trowbridge, Robert Stuart, and John Owen, assignees, &c.; Eurotas P. Hastings, De Garmo Jones, Darius Samson, James Abbot, Oliver Newberry, Edward Brooks, Benjamin B. Kerchival, and Shubael Conant, and James A. Vandyke, Peter Desnoyers, and Francis Desnoyers, executors, &c., of Peter Desnoyers, deceased, defendants.

This cause coming on to be further heard, upon the master's report filed, of the amount due to said complainant upon the securities mentioned in the said bill of complaint filed in this cause, no exceptions to the said report have been filed in said cause; and it appearing from said report that there was due to the said complainant from the said Sheldon, at the date thereof, the sum of seven thousand four hundred and thirty-nine dollars and thirty cents, which said report bears date the nineteenth day of October, in the year of our Lord one thousand eight hundred and forty-six. It is ordered, adjudged, and decreed, and the court here doth, on motion of Joy and Porter, solicitors for said complainant, order, adjudge, and decree, that all and singular the said mortgaged premises, described in the said bill of complaint, be sold at public auction, at or after the expiration of three months from the date

of this decree, under the direction of one of the masters of this court, or the marshal of this district, unless previous to the said sale the said Thomas C. Sheldon, mortgagor in said bill mentioned, pays the said sum of seven thousand four hundred and thirty-nine dollars and thirty cents, and interest thereon from the date of said report, together with the costs of this suit to be taxed; that the said sale be made in the county of Wayne, where the said mortgaged premises are situated, and that the said master or marshal give public notice of the time and place of said sale according to the course and practice of this court; and that the complainant, or any of the parties to this cause, may become the purchaser of the mortgaged premises on the said sale; and that the said master or marshal pay to the said complainant or to his solicitor, out of the proceeds of said sale, his costs of this suit to be taxed, and also the sum of seven thousand four hundred and thirty-nine dollars and thirty cents, together with the interest thereon since the date of said master's report above mentioned, or so much thereof as the purchase money of the said mortgaged premises will pay of the same; and that the said master or marshal take his receipt for the amount so paid, and file the same with his report of said sale, and that he bring the surplus monies arising from said sale, if any there shall be, into court without delay, to abide the further order of the court. And it is further ordered, adjudged, and decreed, that the purchaser of the said mortgaged premises at said sale be let into the possession thereof, and that any of the parties to this cause, who may be in possession thereof, or any part thereof, deliver possession thereof to said purchaser on production of the master's or marshal's deed for said premises, after the report of said sale shall have become confirmed.

And it is further ordered, adjudged, and decreed, that if the monies arising from said sale are insufficient to pay the amount so reported as actually due the said complainant, with the interest and costs as aforesaid, that the said master or marshal specify the amount of such deficiency in his report of said sale; to the end that, upon the coming in and confirmation of such report, such further order or decree may be made in the premises as to this court may seem meet.

Said mortgaged premises are described in said bill of complaint as follows, viz.: All those certain lots or parcels of land situate, lying, and being in the city of Detroit, and county of Wayne, and State of Michigan, known and designated as lots numbered five and six, in the military reservation, so called, on the south side of Fort street, in said city, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining.

(Signed,) ROSS WILKINS, *Judge*.

CIRCUIT COURT OF THE UNITED STATES,

For the seventh circuit and district of Michigan, ss:

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true exemplification of the record of the case of William E. Sill, complainant, and Thomas C. Sheldon and Eleanor Sheldon, his wife, and others, defendants, containing the original bill and

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amendments thereto, the answer of said defendants, Thomas C. Sheldon and Eleanor Sheldon, his wife, the subpœnas issued in the case, the testimony taken and filed, the interlocutory orders, the report of the master in chancery, and the final decree in the case.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said circuit court of the United States, at the city of Detroit, the twenty-second day of December, in the year of [SEAL.] our Lord one thousand eight hundred and forty-six, and of the independence of the United States of America the seventy-first.

JN. WINDER, *Clerk.*

Bond for costs of appeal.

SUPREME COURT OF THE UNITED STATES.

WILLIAM E. SILL
vs.
THOMAS C SHELDON & ELEANOR SHELDON. } On appeal. In equity.

Know all men by these presents, that we, Thomas C. Sheldon, of Detroit, in the county of Wayne, and State of Michigan, and Mitchell Hinsdell, of Kalamazoo, Michigan, are held and firmly bound unto the above named William E. Sill, in the sum of five hundred dollars, to be paid to the said William E. Sill, his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the twenty-eighth day of November, A. D. eighteen hundred and forty-six.

Whereas the above named Thomas C. Sheldon, together with Eleanor Sheldon, hath taken an appeal to the Supreme Court of the United States from the decree rendered in the above entitled cause by the circuit court of the United States, for the seventh circuit and district of Michigan, in equity.

Now, therefore, the condition of this obligation is such, that if the above named Thomas C. Sheldon and Eleanor Sheldon shall prosecute their said appeal to effect, and answer all damages and costs that may be awarded against them therein, then this obligation to be void; else to remain in full force and virtue.

THOMAS C. SHELDON, [SEAL.]
MITCHELL HINSDELL. [SEAL.]

Sealed and delivered in presence of—
SAM'L F. GOSS.

Bond approved Nov. 2d, 1846. ROSS WILKINS, *Judge.*

Citation.

UNITED STATES OF AMERICA, *ss:*

To William E. Sill, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington on the first Monday of December next, to answer to an appeal by the defendants from the circuit court of the United States for the district of Michigan, in equity, in a cause wherein you are complainant, and Thomas C. Sheldon and Eleanor Sheldon are defendants, and in which they are the appellants; and to shew cause, if any there be, why the decree in the said cause made shall not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ross Wilkins, circuit judge of the United States for the district of Michigan, this twenty-fourth day of November, A. D. one thousand eight hundred and forty-six.

ROSS WILKINS.

We admit service of this citation, Nov. 25th, 1846.

JOY & PORTER,
For Wm. E. Sill.

Filed November 25, 1846.

JNO. WINDER, *Clerk.*
By GEO. G. BULL, *Dep'y.*

Circuit court of the United States for the district of Michigan.

WILLIAM E. SILL,
vs.
THOMAS C. SHELDON AND ELEANOR SHELDON. } In chancery.

At a session of the circuit court of the United States for the seventh circuit and district of Michigan, held at Detroit on the twenty-fourth day of November, A. D. 1846, sitting in chancery. Present, Hon. Ross Wilkins, circuit judge.

The defendants in this case having, when the decree in this case was entered, (on the twenty-third of November, A. D. eighteen hundred and forty-six,) declared in open court, and in the presence of the opposing counsel, their intention of appealing from said decree, and now claiming the same, it is hereby allowed, and the clerk is hereby ordered to prepare and transmit a transcript in this case, according to the rules and practice of this court, and of the Supreme Court.

It is further ordered that the defendant, Thomas C. Sheldon, execute a bond with good and sufficient security in the penalty of five hundred dollars, conditioned to prosecute said appeal to effect, and answer all damages and costs, if the said defendants fail to make their plea good.

ROSS WILKINS.

THEO. ROMEYN,
Of counsel for defendants.

Circuit court of the United States for the district of Michigan.

WILLIAM E. SILL
vs.
THOMAS C. SHELDON & ELEANOR SHELDON. } In equity.

The defendants in this case having, at the time of the entry of the decree therein, to wit, on the twenty-third day of November, A. D. eighteen hundred and forty six, in open court, notified to the court, and to the counsel for the complainant, their intention to appeal from said decree, now claim said appeal, and pray that the same may be allowed, and that the amount of security for costs may be fixed, and a citation to the complainant may be signed by the judge by whom this court was held, according to the rules and practice of the court.

THEO. ROMEYN,
Sol. for above defendants.

DETROIT, 24*th Nov.*, 1846.

The execution of the order allowing appeal in this case appears by the within transcript, &c.

JNO. WINDER, *Clerk.*

Filed November 24, 1846.

JNO. WINDER, *Clerk.*
By GEO. G. BULL, *Deputy.*

Filed Jan. 11, 1847.